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Legal DEPARTMENT

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Opinions under the

Bombay Industrial

Relations Act, 1946.

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Office of the R.L.A.

It appears that the Rashtriya Mill Mazdoor Sangh has made an application to the Registrar of Unions for registration under the Bombay Industrial Relations Act, 1946, as a representative union for cotton, silk and woollen textile industries in the City of Bombay. While the constitution, membership registers, counterfoils of receipts etc. were being scrutinized in the Registrar's office, objections were received from the Bombay Girni Kamgar Union and the Mill Mazdoor Sabha, Bombay, that the Rashtriya Mill Mazdoor Sangh has not got the requisite membership and is not a bona fide union conducted in the interest of the employees. The Bombay Girni Kamgar Union and the Mill Mazdoor Sabha, Bombay, desired to inspect and have copies of the following documents:-

1. Membership of registers of the Rashtriya Mill Mazdoor Sangh,
2. Counterfoils of receipts, and
3. Statement of accounts.

This was objected to by the Rashtriya Mill Mazdoor Sangh in the course of the enquiry on the ground that by omitting to insert in the Bombay Industrial Relations Act a provision similar to section 17 of the Bombay Industrial Disputes Act, 1938, the enquiry by the Registrar is rendered merely an administrative enquiry where no party is entitled to appear as a matter of right and claim inspection of documents. The question raised for the consideration of the R.L.A. is whether the enquiry by the Registrar under section 14 of the Bombay Industrial Relations Act, 1946, is a judicial enquiry and if so, whether the Bombay Girni Kamgar Union and the Mill Mazdoor Sabha, Bombay, are entitled to appear ——————

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in the enquiry and claim inspection of the documents produced by the Rashtriya Mill Mazdoor Sangh.

2. Section 13(1) of the Bombay Industrial Relations Act provides for an application by any union for registration. Section 14 provides:

> "on receipt of an application from a union for registration under section 13 and on payment of the fee prescribed, the Registrar shall, if after holding such enquiry as he deems fit he comes to the conclusion that the conditions requisite for registration specified in the said section are satisfied, and that the union is not otherwise disqualified for registration, enter the name of the union in the appropriate register maintained under section 12 and issue a certificate of registration in such form as may be prescribed."

Section 20(1) empowers the party to proceeding before the Registrar to appeal against the order of the Registrar in the Industrial Court within 30 days from the date of the order passed by him. Section 21 requires that an order passed under section 14 should be published in the prescribed manner.

Section 118(1) empowers the Registrar to exercise such powers as are vested in Courts in respect of —

(a) proof of facts by affidavits,

(b) summoning and enforcing the attendance of any person and examining him on oath,

(c) compelling the production of documents,

and

(d) issuing commissions for the examinations of witnesses.

Reading all these provisions together it appears that although the Registrar is empowered to hold such enquiry as he deems fit, the enquiry should be a judicial enquiry inasmuch as he is empowered not only to record evidence on oath but also to summon witnesses, to receive affidavits and to cause production of documents and his order would also be appealable, it being determinative of the rights of the union.

3. Under section 13(1), that union alone which desires to be registered can apply to the Registrar. Section 17 of

the old Bombay Industrial Disputes Act, 1938, contained a specific provision entitling every employer in the industry concerned and every representative of employees whose interest may be affected to appear at the enquiry made by the Registrar under Chapter II; and section 18(1) gave liberty to such employer and such representative of employees to appeal to the Industrial Court against any order passed by the Registrar under this Chapter within 30 days from the date of such order. The Bombay Industrial Relations Act,1946 contains no provisions similar to sections 17 and 18 of the Bombay Industrial Disputes Act, and the omission of these provisions appears to be very meterial. Consequently the Bombay Girni Kamgar Union and the Mill Mazdoor Sabha, Bombay, cannot as of right intervene in the proceedings before the Registrar in the present case.

4. It is, however, open to the Registrar to examine any representative of the Bombay Girni Kamgar Union and the Mill Mazdoor Sabha, Bombay, and to receive evidence produced by them to disprove the right of the Rashtriya Mill Mazdoor Sangh to registration. Similarly the Registrar can exercise his judicial discretion and decide whether the Bombay Girni Kamgar Union or the Mill Mazdoor Sabha should be impleaded as proper parties to the enquiry. If they are so impleaded, they would naturally get the right to inspect the documents produced by the applicant Rashtriya Mill Mazdoor Sangh. So long as they are not impleaded as parties they cannot as of right claim inspection.

Sd/- P.H.Lad

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No.13396 dated 24th Dec. 1947.

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Bombay Industrial Relations Act,1946.

It appears that certain conciliation proceedings initiated under the Bombay Industrial Disputes Act, 1938, are pending. P.& S.Deptt. is considering the questionwhether further steps to be take in respect of these proceedings should be done under the replealed Bombay Industrial Disputes Act, 1938 or the Bombay Industrial Relations Act, 1946. The Joint Secretary, Political and Services Department observes:-

> " I am inclined to the view that where there is a corresponding section in the new Act under which the same action could be taken as under the old, the action (in this case submission of reports on conciliation proceedings) should be taken under the new Act, so that the consequential rights and liabilities can flow. While section 122(c) of the B.I.R. Act, 1947 saves rights and privileges accrued under the old Act, I doubt if any additional rights which would accrue under similar circumstances under the new Act would also accrue in respect of proceedings now completed etc. under the relevant sections of the old Act."

By section 122 of the Bombay Industrial Relations Act, 1946, the Bombay Industrial Disputes Act, 1938 has been repealed. The proviso (a) to that section saves every appointment order, rule, regulation, notification or notive made, issued or given under the provisions of the Act so repealed. The proviso (c) provides that any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed shall not be affected and any investigation, legal proceedings or remedy in respect of such right privilege, obligation or liability shall, so far as it is not inconsistent with the provisions of this Act, be made, instituted, availed of as if the said Act had not been repealed and continues in operation. Proviso (d) provides that any proceedings pending before the Industrial Court, conciliation proceedings or any proceedings relating to the trial of offences punishable under the provisions of the Act so repealed shall be continued and completed as if the said Act had not been repealed and continues in operation

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and any penalty on such proceedings shall be recorded under the Act so repealed. The provision relevant in regard to the pending conciliation proceedings would be the proviso (d) to section 122. That provision expressly saves the provisions of the Bombay Industrial Disputes Act, 1938 in respect of the steps to be taken for recording the result of those proceedings and the legal consequences following such registration. It is, therefore, apparent that the reports in the pending conciliation proceedings will have to be submitted under the Bombay Industrial Disputes Act,1938, and the provisions of the Bombay Industrial Relations Act, 1946 cannot be resorted to in respect of those proceedings, and the additional rights, if any, accruing under the Bombay Industrial Relations,Act, 1946 would not be available.

Sd/- P.W.Lad,
13/12
Remembrancer of Legal Affairs.

U.R. to P.& S.D. No.12041 dated 13th December 1947.

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